

7.

## FIRST AMENDMENT TO SURFACE LEASE AND MINING AGREEMENT

This FIRST AMENDMENT TO SURFACE LEASE AND MINING AGREEMENT (the "First Amendment") is made and entered into this 29 day of May, 2008, and entered into by and between Third Peak, L.P., successor in interest to Robert L. Dow ("Lessor") and Silver Creek Materials, Inc., a Texas corporation ("Lessee").

### Introductory Provisions

Lessee and Robert L. Dow, predecessor in interest to Lessor, entered into a SURFACE LEASE AND MINING AGREEMENT (the "Mining Agreement") on October 23, 2007; and

The Mining Agreement encumbers the Property described in the Exhibit "A" attached to the Mining Agreement, which Exhibit "A" is incorporated into this First Amendment by reference (the "Property"); and

Lessor and Lessee have previously agreed to exclude certain portions of the Property from the Mining Agreement to allow Lessor to separately lease those portions of the Property with third parties to create a Well Site (the "Well Site") for purposes of drilling, constructing, operating, and maintaining improvements for the disposal of saltwater used as a part of the drilling process for natural gas; and

Lessee and Lessor now wish to memorialize their prior, verbal agreements with this First Amendment.

### Agreements

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Well Site Excluded From Mining Agreement. Lessor and Lessee hereby exclude from the Mining Agreement those tracts of land and access easements lying within the Property and particularly described in the Exhibits A-1, A-2, B-1, and B-2 attached to this First Amendment and incorporated hereby in reference.
2. Mining Agreement Confirmed. Except as modified by this First Amendment, the parties agree and acknowledge that the Mining Agreement remains valid, and subsisting.

### Miscellaneous

This First Amendment and the Mining Agreement contain the full and complete agreement of the parties hereto, and all prior negotiations and agreements pertaining to the subject matter hereof, are expressly merged in this agreement. Each party hereto disclaims any reliance on any facts, promises, undertakings or representations (oral or written) made by any other party or his agent or attorneys, prior to or contemporaneous to the date of execution of this First Amendment.

In case any one or more of the provisions contained in this First Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision thereof and this First Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This First Amendment shall be construed under and in accordance with laws of the State of Texas, and all obligations of the parties created hereunder are performable in Tarrant County, Texas.

*This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.*

The failure of any party hereinto insist upon the strict performance of any provision of this First Amendment shall not be considered as a waiver of any subsequent default of the same or similar nature.

This First Amendment may be executed in multiple counterparts, by one or more signatories, separately and each of such counterparts shall be deemed an original for all purposes, and all such signed counterparts shall constitute but one and the same instrument.

For purposes of the parties' execution of this First Amendment, it is expressly agreed that a facsimile or telecopy of a party's signature hereto shall be as valid, binding and enforceable as the original.

Nothing herein is intended to give, nor shall it have the effect of giving, any enforceable rights to any third parties who are not parties hereto or permitted assignees of the parties hereto, whether such claims are asserted as third party beneficiary rights or otherwise.


All parties acknowledge that this First Amendment is the result of substantial negotiation between the parties. All parties further acknowledge that each party and its legal counsel have reviewed, revised, and contributed to this First Amendment, so that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this First Amendment, nor any First Amendments or exhibits thereto.

Lessor

Lessee

THIRD PEAK, L.P., a Texas limited Partnership

SILVER CREEK MATERIALS, INC., a Texas corporation

By 

By 

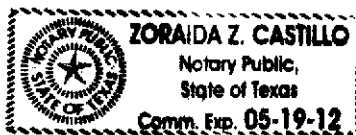
Robert L. Dow, Manager  
Silver Creek Operations, LLC  
General Partner

Robert L. Dow, President

Date: 5-29-08

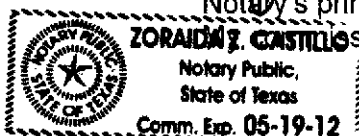
Date: 5-29-08

This instrument was acknowledged before me on the 29th day of May, 2008, by Robert L. Dow, Manager of Silver Creek Operations, L.L.C., General Partner of THIRD PEAK, L.P., a Texas limited partnership, on behalf of said partnership.



Zoraida Z. Castillo  
Notary Public  
Notary's printed name: Zoraida Z Castillo  
My commission expires: 5-19-2012

This instrument was acknowledged before me on the 29th day of May, 2008, by Robert L. Dow, President of SILVER CREEK MATERIALS, INC., a Texas corporation, on behalf of said corporation.



Zoraida Z. Castillo  
Notary Public  
Notary's printed name: Zoraida Z Castillo  
My commission expires: 5-19-2012

EXHIBIT A-1

LEGAL DESCRIPTION

A tract of land out of the John H. Smallwood Survey, Abstract No. 1485, being a portion of that 158 acre tract conveyed from N. E. Grant and wife, Edna Grant to H. B. Dow by deed dated May 8, 1940, and recorded in Volume 1432, Page 150, Deed Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

COMMENCING at a found 1/2" steel rod at the northeast corner of said 158 acre tract;

THENCE along the north line of said 158 acre tract the following two calls:

South 89°59'06" West, 341.34 feet to a point in Live Oak Creek;

North 89°46'59" West (Basis of Bearings), passing a found 2-1/2" pipe at 80.91 feet, in all 393.39 feet to a point;

THENCE South 00°13'01" West, 133.18 feet to the Point of Beginning;

THENCE South 74°15'00" East, 216.93 feet to a point;

THENCE South 31°25'00" West, 564.20 feet to a point;

THENCE North 65°20'00" West, 303.00 feet to a point;

THENCE North 41°04'00" East, 549.00 feet to the Point of Beginning, and containing 3.1844 acres (138,712 square feet) of land, more or less.

Grant Engineering, Inc.

Engineers      Surveyors      Planners  
3244 Hemphill Street      Fort Worth, Texas 76110-4014      817-923-3131

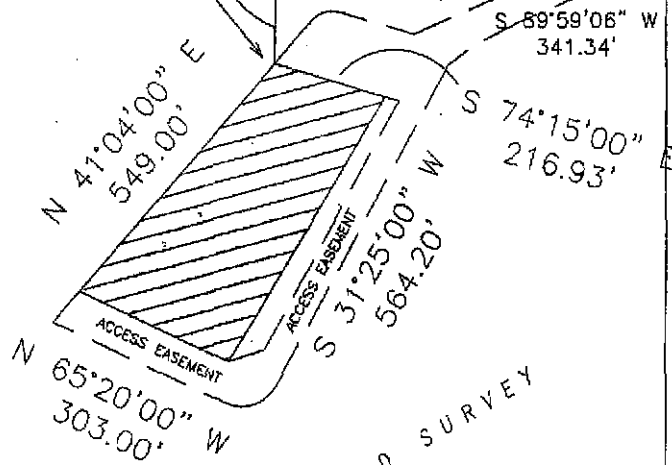
EXHIBIT A-2  
SKETCH OF TRACT



SCALE: 1" = 300'

JACOB WILCOX SURVEY  
NO. 2  
A-1725

POINT OF BEGINNING  
S 00°13'01" W 133.18'  
N 89°46'59" W 393.39'  
FND. 2-1/2" PIPE 295.34' 80.91'  
POINT OF COMMENCING  
FND. 1-1/2" ROD



JOHN H. SMALLWOOD SURVEY  
A-1485

ROBERT W. TANNAHILL SURVEY  
A-1540

EXHIBIT B-1

LEGAL DESCRIPTION

A tract of land out of the John H. Smallwood Survey, Abstract No. 1485, being a portion of that 158 acre tract conveyed from N. E. Grant and wife, Edna Grant to H. B. Dow by deed dated May 8, 1940, and recorded in Volume 1432, Page 150, Deed Records, Tarrant County, Texas, being more particularly described by metes and bounds as follows:

COMMENCING at a found 1/2" steel rod at the northeast corner of said 158 acre tract;

THENCE South 89°59'06" West along the north line of said 158 acre tract, 148.53 feet to the Point of Beginning;

THENCE South 66°22'42" West, 167.69 feet to the beginning of a curve to the left whose radius bears South 23°37'18" East, 439.89 feet;

THENCE along said curve to the left through a central angle of 16°12'34", an arc length of 124.45 feet (long chord bears South 58°16'25" West, 124.03 feet) to the end of this curve;

THENCE South 29°08'00" West, 665.61 feet to the beginning of a curve to the right whose radius bears North 60°52'00" West, 75.00 feet;

THENCE along said curve to the right through a central angle of 85°32'00", an arc length of 111.96 feet (long chord bears South 71°54'00" West, 101.85 feet) to the end of this curve;

THENCE North 65°20'00" West, 346.95 feet to a point;

THENCE North 41°04'00" East, 72.97 feet to a point;

THENCE South 65°20'00" East, 303.00 feet to a point;

THENCE North 71°12'11" East, 71.46 feet to a point;

THENCE North 29°08'00" East, 516.75 feet to a point;

THENCE North 74°15'00" West, 243.04 feet to a point;

THENCE North 41°04'00" East, 106.62 feet to the beginning of a curve to the right whose radius bears South 48°56'00" East, 50.00 feet;

THENCE along said curve to the right through a central angle of 64°41'00", an arc length of 56.45 feet (long chord bears North 73°24'30" East, 53.50 feet) to the end of this curve;

THENCE South 74°15'00" East, 147.27 feet to a point;

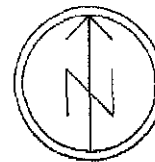
THENCE North 66°22'42" East, 189.71 feet to a point in the north line of said 158 acre tract;

THENCE North 89°59'06" East along the north line of said 158 acre tract, 149.83 feet to the Point of Beginning, and containing 2.4321 acres (105,940 square feet) of land, more or less.

Grant Engineering, Inc.

Engineers      Surveyors      Planners  
3244 Hemphill Street      Fort Worth, Texas 76110-4014      817-923-3131

EXHIBIT B-2  
SKETCH OF TRACT



SCALE: 1" = 300'

JACOB WILCOX SURVEY  
 NO. 2  
 A-1725

S 89°46'59" E

L-12  
 L-11  
 C-3  
 L-10  
 L-9  
 L-8  
 L-7  
 L-6  
 L-5  
 L-4  
 C-2  
 C-1  
 L-2  
 L-13  
 FND. 2-1/2" PIPE 80.91'

POINT OF BEGINNING  
 L-1  
 POINT OF COMMENCING  
 FND. 1/2" ROD

JOHN H. SMALLWOOD SURVEY  
 A-1485

ROBERT W. TANNAHILL SURVEY  
 A-1540

Grant Engineering, Inc.

Engineers 3244 Hemphill Street Fort Worth, Texas 76110-4014  
 Surveyors Planners 817-923-3131



W MICHAEL GREENE P C  
2109 S BOWEN RD

ARLINGTON, TX 76013

Submitter: W MICHAEL GREENE P C

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SUZANNE HENDERSON  
TARRANT COUNTY CLERK  
TARRANT COUNTY COURTHOUSE  
100 WEST WEATHERFORD  
FORT WORTH, TX 76196-0401

**DO NOT DESTROY**  
**WARNING - THIS IS PART OF THE OFFICIAL RECORD.**

Filed For Registration: 06/02/2008 01:57 PM  
Instrument #: D208204837  
A 8 PGS \$40.00

By: \_\_\_\_\_



**D208204837**

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE  
OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR  
RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

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